In the High Court of Judicature at Madras

Dated:23.02.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.723 OF 1997

1. Manicka Padayachi
2. Kasiammal
3. Rajendran
4. Ravi ..Appellants/Defendants

vs

Chinnaiyan ..Respondent/Plaintiff

This second appeal is filed under Section 100 of C.P.C against the judgment and decree dated 17.9.1996 made in A.S.No.6 of 1993 on the file of the Court of Subordinate Judge, Chidambaram confirming the decree and Judgment in O.S.No.828 of 1986 dated 23.12.1992 on the file of the Court of District Munsif, Chidambaram.

For Appellants : Mr.N.Maninarayanan
For Respondent : Mrs.Hema Sampath,
Senior Counsel
for Mr.S.Venkateswaran

JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.6 of 1993 on the file of the Court of Subordinate Judge, Chidambaram. The defendants, who have lost their defence before the Courts below, are the appellants herein.

2. The averments in the plaint for the purpose of deciding this appeal sans irrelevant particulars are as follows:
The suit is for declaration of plaintiff's title in respect of three cents out of 1 acre 65 cents in Re-survey N0.11/3 in Chettimuttu Village, Chidambaram Taluk, for recovery of possession, mesne profits and for mandatory injunction. The entire 1 acre 65 cents in Re-survey No.11/3 in Chettimuttu Village, originally belonged to one Mohammed Mustafa Saheb. The plaintiff was a cultivating tenant of the same and he was in possession and enjoyment of the plaint schedule property. After the death of Mohammed Mustafa Saheb, his heirs sold the southern 10 cents out of 1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

acre 65 cents to one Kulandaivel Padayachi under a registered sale deed dated 31.10.1977 for valuable consideration. The said Kulandaivel sold the above said 10 cents to the plaintiff under a registered sale deed dated 25.3.1982. Thus, the plaintiff became entitled to southern 10 cents absolutely and he had been in possession and enjoyment of the same from the date of the sale. The heirs of Mohammed Mustafa Saheb sold the remaining northern 1 acre 55 cents to the plaintiff under a registered sale deed dated 21.5.1985 for proper consideration. Thus, the plaintiff became entitled to the entire 1 acre 65 cents in R.S.No.11/3 and he is in possession and enjoyment of the same. The plaint schedule property is southern 3 cents out of 1 acre 65 cents.

2a) The first defendant trespassed into the suit property in May 1983 and since then he has been in unlawful possession of the suit property along with the defendants 2 to 4 . The second defendant is the wife of the first defendant and defendants 2 to 4 are his children. The defendants have put up three huts in the suit property. The defendants are trespasser and thus they are liable to surrender the possession to the plaintiff. The plaintiff issued a suit notice dated 21.5.1986 to the first defendant, who has issued a reply notice dated 26.5.1986 containing untenable contentions. The entire extent of 1 acre 65 cents was not a cultivable land and that a portion in the south was lying as a site. It is not correct to say that the southern portion in R.S.No.11/3 is a poramboke and is lying vacant unoccupied as one block for the past more than sixty years and that the first defendant has occupied the road poramboke and adjoining portion of R.S.No.11/3 and constructed a thatched house and that he has been living in the suit property with his family members for more than a period stipulated under law. The defendants have not been issued "B" memos for the plaint schedule property. The defendants have not prescribed title to the suit property by way of adverse possession. Originally, the defendants were residing only in the property on the road poramboke and they encroached into the suit property only in May 1983. Hence the suit.

3. The first defenant has filed a written statement contending that the property is in R.S.No.11/3 measuring 1 acre 65 cents originally belonged to Mohammed Mustafa Saheb. The averment in the plaint that the plaintiff was the cultivating tenant of the entire extent of 1 acre 65 cents under Mohammed Mustafa Saheb is not correct. The plaintiff has not purchased 10 cents in R.S.No.11/3 from Kulanthaivel Padayatchi, the predecessors-in-tile under Mohammed Mustafa Saheb. The plaintiff has not taken any sale deed from the heirs of Mohammed Mustafa Saheb in respect of the remaining 1 acre 55 cents in R.S.No.11/3. The plaintiff is not entitled to the entire extent of 1 acre 65 cents in R.S.No.11/3. The defendants have not trespassed into an extent of southern 3 cents out of 1 acre 65 cents in May 1983 as contended by the plaintiff . For the notice dated 21.5.1986, the defendants have sent a suitable reply on 26.5.1986.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3a)The entire extent of 1 acre 65 cents is not a cultivable land. The portion in the south is lying as a site and it is adjacent to road poramboke in the south. The road poramboke and the southern portion in R.S.No.11/3 have been lying vacant and unoccupied as one block for the past more than sixty years. Some 35 years back, the first defendant occupied the road poramboke and in the adjoining portion in R.S.No.11/3 removed the thorny bushes and constructed a thatched house. Since then the defendants are living in the said property. The defendants have also put up two cattle sheds in the property and they are in continuous possession and enjoyment of the suit property, after paying house tax and land tax under "B"memos issued by the Government. The defendants have prescribed title to the suit property by way of long continuous and un-interrupted possession over the statutory period . The defendants are not liable to surrender the suit property to the plaintiff, since the plaintiff has no title in respect of the suit property. The plaintiff did not get sale deed from all the heirs of Mohammed Mustafa Saheb. The plaintiff became a co-sharer along with other heirs of Mohammed Mustafa Saheb. It is not correct to say that the plaintiff has got a right to evict the defendants. The defendants are not claiming any right under the sale deed dated 11.9.1977. The vendor, under sale deed dated 11.9.1977, is claiming title by virtue of a Court proceedings began to interfere with the defendants' enjoyment of the property. The above said sale deed dated 11.9.1977 came into existence but the defendants are not claiming any right under the sale deed dated 11.9.1977.Hence , the suit is liable to be dismissed.

4. On the above pleadings, the learned trial Judge has framed five issues for trial. The plaintiff has examined himself as P.W.1 and exhibited Exs A1 to A8. The first defendant has examined himself as D.W.1 besides examining another witness Mr.Manthiri as D.W.2. Exs B1 to B32 were marked on the side of the defendants.

5. After considering both the oral and documentary evidence let in before the trial Court, the learned trial Judge has come to a conclusion that the defendants have not prescribed title by way of adverse possession to the suit property and accordingly decreed the suit as prayed for, relegating the question of mesne profits to be decided in a separate proceedings under Order 20 Rule 12 CPC. Aggrieved by the Judgement of the learned trial Judge, the defendants have preferred an appeal in A.S.No.6 of 1993 before the Subordinate Judge, Chidambaram. The learned first appellate Judge concurring with the findings of the learned trial Judge has dismissed the appeal. Hence the second appeal before this Court by the defendants.

6. The substantial questions of law involved in this appeal are

" 1. Whether the Judgment of the Appellate Court is in confirmity and satisfy all requirements contemplated under Order 41 Rule 31(Mad.)?

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. Whether the Courts below right in decreeing the suit after finding that the suit item belong to Saritha Bivi and she was not made a party to the suit?

3. Whether the Judgements of the Courts below are sustainable in the absence of all necessary parties to the suit property are not made parties to the suit?

7. Heard Mr.N.Maninarayanan, learned counsel appearing for the appellants and Mrs.Hema Sampath, learned senior counsel appearing for the respondent and considered their respective submissions.

8.The Points:

The learned counsel appearing for the appellants relying on Ex A8 final decree passed in O.S.No.150 of 1981 on the file of the Court of District Munsif, Chidambaram would contend that one Saheeda Beevi was allotted the entire 1 acre 65 cents in R.S.No.11/3 as Item No.2 to "B" schedule property to Ex A8. But the said Saheeda Beevi was not made a party in the suit which is fatal to the case of the plaintiff. But on a careful reading of the decree of the trial Court which was confirmed by the first appellate Court will go to show that the plaintiff's right and title to the plaint schedule property was declared along with the legal representatives of Mohammed Mustafa Saheb who is the husband of Saheeda Beevi as a co- sharer and the findings of the Courts below is that the defendants are the trespassers and are not prescribed any title in respect of the suit property by way of long continuous and uninterrupted possession, adverse to the interest of the plaintiff. The plaintiff claims title to the entire extent of 1 acre 65 cents under Exs A2 and A3 sale deeds. Under Ex A2, the plaintiff has purchased southern 10 cents out of total extent of 1 acre 65 cents in R.S.No.11/3 in Chettimuttu Village. Ex A1 is the sale deed dated 31.10.1977 in favour of Kulandaivel Padayachi, the vendor under Ex A2 sale deed. Under Ex A1 sale deed, Kulandaivel Padayachi had purchased southern 10 cents out of 1 acre 65 cents in R.S.No.11/3 , Chettimuttu Village from Saheeda Beevi and her sons Jawahar Ali, Anwar Ali and Subair Ali. Saheeda Beevi is the second defendant in Ex A8 suit. The plaintiff has also purchased the remaining 1 acre 55 cents out of 1 acre 65 cents in R.S.No.11/3 in Chettimuttu Village from the said Saheeda Beevi and her children Jawahar Ali, Ashraf Ali, Anwar Ali and Subari Ali. So under Ex A2 and Ex A3 sale deeds, the entire 1 acre 65 cents in R.S.No.11/3 has been purchased by the plaintiff.

9. The learned counsel appearing for the appellants relying on Commissioner's Report Ex C1 and Plan Ex C2 and contended that the defendants are in possession of three cents in the southern portion of the plaint survey number property . It is the definite case of the plaintiff that only during 1983, the defendants had trespassed into the plaint schedule property measuring 3 cents in R.S.No.11/3. To substantiate the contention that the defendants have prescribed title by way of adverse possession, the defendants have produced Exs B1 to B32 documents. Out of them, Exs B1 to B5 are the "B"memos issued by the Government in favour of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the first defendant Manicka Padayachi. It is pertinent to note that Exs B1 to B5 were issued not for suit survey No.11/3 but for survey No.12 which is a road poramboke. It has been specifically mentioned in Exs B1 to B5 that there is a thatched hut in R.S.No.12. Under such circumstances, the learned first appellate Judge has come to a correct conclusion at paragraphs 15 and 16 of his judgment that it cannot be said that the defendants have prescribed title to the plaint schedule property by way of adverse possession on the basis of Exs B1 to B32 documents. Exs B6 to B30 are the house tax receipts and Exs 31 and 32 are the receipt for payment of electricity consumption charges.

10. Under such circumstances, I do not find any reason to interfere with the well considered Judgment of the first appellate Judge in A.S.No.6 of 1993 on the file of the Court of Subordinate Judge, Chidambaram which is neither infirm nor illegal to warrant any interference from this Court. Points are answered accordingly.

11. In fine, the appeal is dismissed and the decree and judgment in A.S.No.6 of 1993 on the file of the Court of Subordinate Judge, Chidambaram with costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The Subordinate Judge, Gobichettipalayam.
2. The District Munsif, Sathyamangalam.
3. The Record Keeper,
V.R.Section, High Court, Madras.

1 cc To Mrs.Hema Sampath, Advocate, SR.11204.

Second Appeal No.723/1997

NG(CO)
RVL 26.03.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/